

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GAREGIN SPARTALIAN,

v.

CITIBANK, N.A., et al,

Plaintiff,

Defendants.

Case No. 2:12-cv-00742-MMD-PAL

ORDER

(Defs.' Motions for Summary Judgment –
dkt. nos. 51, 53)
(Plf.'s Motions for Continued Discovery –
dkt. no. 68, 70).

I. SUMMARY

Before the Court is Defendant Citibank N.A.'s ("Citibank") Motion for Summary Judgment (dkt. no. 51), and Defendants The Law Offices of Rausch, Sturm, Israel, Enerson, & Hornick, LLC, Megan Hummel, Esq., Richard A. Russell, Esq., and Shelley L. Lanzkowsky's (collectively "Law Firm") Motion for Summary Judgment. (Dkt. no. 53.) Also before the Court is Plaintiff Garegin Spartalian's ("Spartalian") Motions for Continuance to Obtain Evidence and Continuance of Discovery. (Dkts. no. 68, 70.) The Court has also considered the respective oppositions and replies. For the reasons discussed below, Defendants' Motions are granted and Plaintiff's Motions are denied.

II. BACKGROUND

A. Factual Background

This is a case involving an allegedly unpaid debt. Citibank issued a credit card to Spartalian, who eventually failed to make timely payments. Citibank hired Law Firm to collect the debt. Law Firm sent an initial demand for payment to Spartalian on May 31, 2011, but the letter was never received. On July 13, 2011, Law Firm sent a second letter

1 offering to settle the debt. On July 18, 2011, Spartalian sent a demand for debt
2 verification to Law Firm via certified mail. On October 7, 2011, Law Firm sent verification
3 to Spartalian. After Spartalian failed to remit the payment amount, Citibank through its
4 agent, Law Firm, filed a lawsuit against Spartalian. Law Firm enlisted the services of
5 Defendant Wagner to serve the summons and complaint. Wagner allegedly left a copy of
6 the summons and complaint on the ground in front of Spartalian's home and falsified the
7 Affidavit of Service.

8 **B. Procedural Background**

9 On May 3, 2012, Spartalian filed suit alleging seven claims: (1) violations of the
10 Fair Debt Collections Practices Act ("FDCPA"), (2) violations of NRS § 649.370, based
11 upon FDCPA violations, (3) fraud, (4) negligence, (5) violations of the Fair Credit
12 Reporting Act ("FCRA"), (6) defamation, and (7) invasion of privacy/false light against
13 Defendants Citibank, Law Firm, and JJL Process Corporation, Scott Levine, Joel
14 Rosenthal, and Robert Wagner (collectively "Process Servers"). On August 15, 2012,
15 Spartalian voluntarily dismissed all claims against the Process Servers. The Court
16 approved voluntary dismissal of the Process Servers via minute order on October 23,
17 2012.

18 On February 13, 2013, upon Law Firm's Partial Motion to Dismiss, the Court
19 partially dismissed several claims against Law Firm. The Court dismissed claims 1 and 2
20 with prejudice to the extent that the claims relied on the actions of the Process Servers.
21 The Court also dismissed claim 3 without prejudice for failure to state a claim and claim
22 4 with prejudice as legally pre-empted. Spartalian failed to amend claim 3 by the Court's
23 March 7, 2013, deadline for amendment. (Dkt. no. 64.) Therefore, as to Law Firm, claims
24 1 and 2 as they related to the mailing of the allegedly defective notice of debt remained,
25 as did claims 5, 6, and 7.

26 Now, Citibank seeks summary judgment on all claims, and Law Firm seeks
27 summary judgment on claims 1, 2, 5, 6, and 7. Spartalian opposes the motions, requests
28 ///

1 continuances for additional discovery, and requests the Court to set aside his voluntarily
2 dismissal of Process Servers.

3 **III. LEGAL STANDARD**

4 The Federal Rules of Civil Procedure provide for summary adjudication when the
5 pleadings, depositions, answers to interrogatories, and admissions on file, together with
6 the affidavits, if any, show that "there is no genuine dispute as to any material fact and
7 the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. A dispute as
8 to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a
9 verdict for the nonmoving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
10 (1986). A principal purpose of summary judgment is "to isolate and dispose of factually
11 unsupported claims." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

12 In determining summary judgment, a court applies a burden-shifting analysis. "In
13 order to carry its burden of production, the moving party must either produce evidence
14 negating an essential element of the nonmoving party's claim or defense or show that
15 the nonmoving party does not have enough evidence of an essential element to carry its
16 ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210
17 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56's requirements,
18 the burden shifts to the party resisting the motion to "set forth specific facts showing that
19 there is a genuine issue for trial." *Anderson*, 477 U.S. at 256. The nonmoving party "may
20 not rely on denials in the pleadings but must produce specific evidence, through
21 affidavits or admissible discovery material, to show that the dispute exists," *Bhan v. NME*
22 *Hosp., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and "must do more than simply show
23 that there is some metaphysical doubt as to the material facts." *Orr v. Bank of Am.*, 285
24 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted).

25 In determining a summary judgment motion, the Court may only consider
26 admissible evidence. Fed. R. Civ. P. 56(e), *Beyene v. Coleman Sec. Servs., Inc.*, 854
27 F.2d 1179, 1181 (9th Cir. 1988). To be admissible, proper foundation must be laid and
28 documents must be authenticated. *Id.*, *Canada v. Blain's Helicopters, Inc.*, 831 F.2d 920,

1 925 (9th Cir. 1987). In a summary judgment motion, documents authenticated through
 2 personal knowledge must be “attached to an affidavit that meets the requirements of
 3 [Fed.R.Civ.P.] 56(e) and the affiant must be a person through whom the exhibits could
 4 be admitted into evidence.” *Canada*, 831 F.2d at 925 (9th Cir. 1987).

5 *Pro se* complaints are subject to “less stringent standards than formal pleadings
 6 drafted by lawyers” and should be “liberally construed.” *Erickson v. Pardus*, 551 U.S. 89,
 7 94 (2007) (citation omitted). However, *pro se* litigants are not entitled to lenient
 8 evidentiary standards for the purposes of summary judgment motions. *Jacobsen v. Filler*,
 9 790 F.2d 1362, 1364-65 (holding “[f]irst and foremost is that *pro se* litigants in the
 10 ordinary civil case should not be treated more favorably than parties with attorneys of
 11 record.”). Trial courts are under no obligation to advocate for, assist, or guide *pro se*
 12 litigants through the trial process. *Id.* at fn.5. Therefore, if a *pro se* litigant fails to offer
 13 admissible evidence to defeat a motion for summary judgment, the remedy “is to move
 14 to reconsider or to set aside; it is not for the trial court to inject itself into the adversary
 15 process on behalf of one class of litigant.” *Id.* at 1365.

16 **IV. ANALYSIS**

17 **A. Claims 1 And 2 – FDCPA and NRS § 649.370 Violations**

18 As discussed in the Court’s February 13, 2013, Order, Spartalian has failed to
 19 state a claim sufficient to impute liability to Defendants under the FDCPA and Nevada
 20 law for the allegedly wrongful actions of Wagner in his role as a process server and
 21 agent of the Defendants. Therefore, to the extent that these claims rely on the actions of
 22 the Process Servers, Citibank and Law Firm are entitled to judgment as a matter of law
 23 and summary judgment is granted. As to both Citibank and Law Firm, the claims relating
 24 to the alleged defective notice of debt remain to be adjudicated.

25 **1. Against Defendant Citibank**

26 To prevail on an FDCPA claim, the plaintiff must prove: 1) the defendant is a “debt
 27 collector” as defined by the FDCPA, 2) plaintiff was the object of defendant’s debt
 28 collection activity, and 3) the defendant violated some duty or prohibition of the FDCPA.

1 See 15 U.S.C. § 1692k. The FDCPA defines the phrase “debt collector” to include: (1)
 2 “any person who uses any instrumentality of interstate commerce or the mails in any
 3 business the principal purpose of which is the collection of any debts,” and (2) any
 4 person “who regularly collects or attempts to collect, directly or indirectly, debts owed or
 5 due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). A “creditor” is defined
 6 as “any person who offers or extends credit creating a debt or to whom a debt is owed,
 7 but such term does not include any person to the extent that he receives an assignment
 8 or transfer of a debt in default solely for the purpose of facilitating collection of such debt
 9 for another.” 15 U.S.C. § 1692a(4). The text of the FDCPA, as well as its legislative
 10 history, makes clear that Congress did not intend the Act to encompass creditors. See
 11 S.Rep. No. 95-382, at *2, U.S. Code Cong. & Admin. News 1977, pp. 1695, 97 (“The
 12 committee intends the term ‘debt collector,’ . . . to cover all third persons who regularly
 13 collect debts for others. The primary persons intended to be covered are independent
 14 debt collectors.”)

15 Here, Citibank is a creditor, not a debt collector, because the Complaint alleges
 16 Citibank “issued its credit card . . . to the Plaintiff.” (Dkt. no. 1 at ¶ 13.) Spartalian
 17 concedes that Citibank is “as a matter of law, exempt under the FDCPA on the basis that
 18 it is not a ‘debt collector.’” (Dkt. no. 69 at 2.) Instead, Spartalian attempts to reframe this
 19 cause of action against Citibank as one for “vicarious liability for the conduct of their legal
 20 counsel.” (Dkt. no. 69 at 2.) Even if a claim for vicarious liability is legally viable,
 21 Spartalian has failed to allege, let alone show by admissible evidence, that Citibank
 22 exercised control over Law Firm in the alleged culpable conduct so as to establish
 23 vicarious liability. See *Newman v. Checkrite Cal., Inc.*, 912 F.Supp. 1354, 1370 (Cal.
 24 1995). Spartalian has failed to allege or show Citibank manifested consent or specifically
 25 authorized Law Firm to hire Process Servers to effectuate allegedly fraudulent service.
 26 Citibank has shown Spartalian’s FDCPA claim against it fails as a matter of law.
 27 Spartalian has failed to resist Citibank’s Motion by setting forth any genuine issues for
 28 ///

1 trial via admissible evidence, rather than mere denials and speculation. Accordingly, as
2 to Citibank, summary judgment is granted on this claim.

3 **2. Against Defendant Law Firm**

4 The FDCPA provides:

5 Within five days after the initial communication with a consumer in
6 connection with the collection of any debt, a debt collector shall, unless
7 the following information is contained in the initial communication or the
consumer has paid the debt, send the consumer a written notice
containing—

- 8 (1) the amount of the debt;
9 (2) the name of the creditor to whom the debt is owed;
10 (3) a statement that unless the consumer, within thirty days after
receipt of the notice, disputes the validity of the debt, or any portion
thereof, the debt will be assumed to be valid by the debt collector;
11 (4) a statement that if the consumer notifies the debt collector in
writing within the thirty-day period that the debt, or any portion
thereof, is disputed, the debt collector will obtain verification of the
debt or a copy of a judgment against the consumer and a copy of
such verification or judgment will be mailed to the consumer by
the debt collector; and
12 (5) a statement that, upon the consumer's written request within the
thirty-day period, the debt collector will provide the consumer with
the name and address of the original creditor, if different from
the current creditor.

13 15 U.S.C. § 1692g. Section 1692g(a) requires only that a Notice be "sent" by a debt
14 collector; a debt collector need not establish actual receipt by the debtor. While section
15 1692g(a) explicitly states that a Notice must be sent, "nowhere does the statute require
16 receipt of the Notice." *Mahon v. Credit Bureau of Placer Cty. Inc.*, 171 F.3d 1197, 1201
17 (9th Cir. 1999). Additionally, if "the consumer notifies the debt collector in writing within"
18 thirty days of the initial communication that any portion of the debt is disputed or
19 requests verification of the debt, the debt collector must cease collection activities until
20 "the debt collector obtains verification of the debt or a copy of a judgment, or the name
21 and address of the original creditor, and a copy of such verification or judgment, or name
22 and address of the original creditor," and it is mailed to the consumer by the debt
23 collector. 15 U.S.C. § 1692g.

24 ///

1 Here, Law Firm has carried its burden of negating Spartalian's FDCPA claim
2 against it by producing evidence of a debt collection initial communication letter dated
3 May 31, 2011,¹ the sworn affidavits of Shelley Lanzkowsky and Carrie Heckman
4 attesting that the letter was sent to Plaintiff, and the letter dated October 7, 2011,
5 verifying the debt. (Dkt. no. 53, Ex. D and E.) Spartalian failed to resist the motion
6 showing a genuine issue for trial.

7 Spartalian has failed to raise a genuine issue of material fact to dispute that Law
8 Firm sent him the required Notice. Law Firm's standard business practice established
9 that the May 31, 2011, initial communication was sent to Plaintiff's home. (Dkt. no. 53,
10 Ex. 5-F.) Law Firm's system generated the May 31, 2011, initial communication, and
11 Carrie Heckman placed that letter in the outgoing mail sending it to Spartalian's
12 attention. (Id.) Spartalian offered no evidence that Law Firm failed to follow its ordinary
13 business procedure in sending the May 31, 2011, initial communication. Spartalian
14 simply says he did not receive it. Moreover, the October 7, 2011, letter is a proper
15 verification of the debt as it includes the creditor, amount of the debt, and billing
16 statements evidencing the debt. (Dkt. no. 53 at Ex. J.) Spartalian's Opposition argues
17 that the entire October 7, 2011, letter is called into question because there is a
18 typographical discrepancy between the name of the person who signed the October 7,
19 2011, letter and the person who Ms. Lanzkowsky said was her subordinate who signed
20 the letter. Regardless of whether the person who sent the October 7, 2011, letter was
21 Brandon E. Bowlin or Brandon E. Bowland, this typographical error does not change the
22 fact that the October 7, 2011, letter constitutes proper verification. At best, Spartalian's
23 Opposition and accompanying declaration simply raise his own speculation that there
24

25 ¹Plaintiff moves to strike the May 31, 2011, initial communication challenging its
26 authenticity based on Carrie Heckman's affidavit arguing that, because there is no "date
27 sent" notation on the document itself, it is inadmissible under Federal Rule of Evidence
28 1003. (Dkt. no. 67 at 5.) However, Plaintiff misconstrues the affidavit because Ms.
Heckman did not attest to dating the document, but rather placing a notation in the file.
(Dkt. no. 53 at Ex. 5-F.) Therefore, Plaintiff's request is denied.

1 may be a genuine issue of fact or some metaphysical doubt as to the material facts. This
2 is insufficient to defeat summary judgment. Moreover, reviewing the May 31, 2011, and
3 October 7, 2011, letters show that Law Firm complied with the FDCPA by giving required
4 admonitions and verifying the debt. Thus, Law Firm is entitled to judgment as a matter of
5 law.

6 **B. Claim 3 – Fraud**

7 This claim has already been dismissed against Law Firm for failure to state a
8 claim, and may be dismissed against Citibank for the same reasons. Spartalian failed to
9 amend the claim to cure its deficiencies within the timeframe allowed by the Court.
10 Accordingly, as Spartalian has failed to state a viable claim for relief and has failed to
11 cure the deficiencies, Citibank and Law Firm are entitled to judgment as a matter of law
12 and summary judgment is granted.

13 **C. Claim 5 – FCRA Violations**

14 The FCRA creates duties for furnishers of information to credit reporting agencies.
15 U.S.C. § 1681s-2. Although there is no private right of action under § 1681s-2(a),
16 *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1162 (9th Cir. 2009), § 1681s-
17 2(b)(1) triggers duties when furnishers of information receive notice from the Credit
18 Reporting Agency (“CRA”) that the consumer disputes the information. *Gorman*, 584
19 F.3d at 1154.

20 Here, Spartalian’s claim against Citibank and the Law Firm fail because
21 Spartalian concedes that he did not notify the CRA of the dispute such to trigger
22 Defendants’ duties under the FCRA. See Dkt. no. 51, Ex. A, Spartalian Dep. Vol. 1 at 46-
23 47; Dkt. no. 53, Ex. 2, Spartalian Dep. Vol. 2 at 84-85, 122. Spartalian’s argument that
24 Defendants’ alleged failure to verify the debt makes the debt uncollectable, and therefore
25 any adverse credit reporting actionable, is unsupported by legal authority. Moreover, as
26 discussed above, Law Firm did verify the debt, thus Spartalian’s argument is unavailing.
27 As Spartalian did not take appropriate action to trigger Defendants’ duties under the
28 FCRA, Citibank and Law Firm are entitled to judgment as a matter of law.

1 **D. Claims 4, 6, And 7 – Negligence, Defamation, and Invasion of Privacy**
 2 **and False Light**

3 As discussed in the Court's February 13, 2013, order, the FCRA preempts state
 4 law claims for "defamation, invasion of privacy, or negligence" and then only to the
 5 extent that those claims are based on the disclosure of FCRA information and are not
 6 based on malice or willful intent to injure. 15 U.S.C. § 1681h(e) and § 1681t(b)(1)(F).
 7 Thus, the FCRA preempts a plaintiff from bringing any state law claim based on conduct
 8 covered by Section 1681s-2. See *Subhani v. JPMorgan Chase Bank, Nat. Ass'n*, No. C
 9 12-01857 WHA, 2012 WL 1980416, at *5-6 (N.D. Cal June 1, 2012) (containing a
 10 thorough discussion of 9th Circuit FCRA pre-emption interpretation).

11 Here, almost all of Spartalian's claims for relief are based on state laws relating to
 12 activity covered by Section 1681s-2, that is, conduct relating to a furnisher's
 13 responsibilities to provide accurate information and conduct reasonable investigations
 14 following a dispute. For the negligence claim, as to the list of duties alleged, only one is
 15 not subsumed and pre-empted by the FCRA, and that duty is not recognized as a
 16 statutory duty under Nevada law. (Dkt. no. 59, 9-10.)² Moreover, the defamation claim
 17 and invasion of privacy claims arise from alleged failures in providing accurate
 18 information, which falls squarely within the ambit of the FCRA. Therefore, as these
 19 claims are pre-empted, Citibank and Law Firm are entitled to judgment as a matter of
 20 law and summary judgment is granted.

21 **E. Plaintiff's Request for Continuances and Additional Discovery**

22 Spartalian seeks the extension of discovery deadlines under Federal Rule of Civil
 23 Procedure 56 and a continuance to be able to take several depositions and then amend

25 2The only alleged duty that is not pre-empted is the "statutory duty of care to
 26 make sure that should the (sic) hire a legal process server who was truthful, honest and
 27 not deceiving in the practice and execution of his/her statutory duty for the service of
 28 summons and complaint." (Dkt. no. 1 at at ¶ 57, 59). However, as discussed in the
 Court's February 13, 2013, Order, Nevada law does not recognize the duty alleged in
 the Complaint as applied to debt collectors.

1 his complaint to state a claim. Although Rule 56 allows for the Court to defer judgment
2 on the summary judgment motion, or extensions of time to take additional discovery, the
3 Court may properly deny the request for additional discovery “if the movant can[not]
4 show how allowing additional discovery would have precluded summary judgment.” *Byrd*
5 v. *Guess*, 137 F.3d 1126, 1135 (9th Cir .1998) (quotation marks omitted), superseded by
6 statute on other grounds.

7 Here, the request is denied for two reasons. First, the Court has already granted
8 an extension of discovery deadlines by joint stipulation of the parties, and continued the
9 disclosure deadlines due to Spartalian’s failure to serve initial disclosures. (Dkt. nos. 48,
10 65). Spartalian seeks additional discovery based on his misreading of Ms. Beckman’s
11 affidavit, which the Court has already addressed, and to discover if Process Servers
12 have committed perjury in other instances, which is irrelevant to this case. Spartalian
13 seeks extra time to discover testimony that he says is “fundamental” to his lawsuit but
14 that he did not request until after the close of discovery and the filing of summary
15 judgment motions. The parties have conducted extensive discovery, and the Court
16 granted an extension of time to oppose summary judgment. Any further extensions
17 would merely result in undue delay. Second, the Court has already instructed Spartalian
18 that he could have filed a Motion for Leave to Amend the Complaint, but had to do so by
19 March 7, 2013. (Dkt. no. 64.) Spartalian failed to do so. Allowing amendment this late in
20 the litigation and after the close of discovery would result in prejudice to the Defendants.
21 Therefore, the request for additional discovery to enable Spartalian to amend his
22 complaint is denied.

23 **F. Plaintiff’s Request to Set Aside Voluntary Dismissal**

24 Spartalian seeks to set aside the voluntary dismissal of claims against Process
25 Servers because he “mistakenly” dismissed them. Spartalian argues his reinstatement
26 application is timely and would not result in prejudice to the Process Servers. However,
27 as Spartalian included this request in his Opposition to Law Firm’s Motion for Summary
28 Judgment, there has been no opposition. When Spartalian sought to voluntarily dismiss

1 the claims against Process Servers, there was a pending motion to dismiss. (Dkt. no.
2 28). Spartalian did not oppose that motion to dismiss. Instead based on Spartalian's
3 voluntary dismissal, the Court granted the motion to dismiss filed by Process Servers. To
4 reinstate these claims against Process Servers when discovery has now closed,
5 Spartalian must move to amend his complaint, or file a new action. Therefore, this
6 request is denied as procedurally improper.

7 **V. CONCLUSION**

8 It is therefore ordered that Defendant Citibank N.A.'s Motion for Summary
9 Judgment (dkt. no. 51) is granted.

10 It is further ordered that Defendants The Law Offices of Rausch, Sturm, Israel,
11 Enerson, & Hornick, LLC, Megan Hummel, Esq., Richard A. Russell, Esq., and Shelley
12 L. Lanzkowsky's Motion for Summary Judgment (dkt. no. 53) is granted.

13 It is further ordered that Plaintiff Garegin Spartalian's Motions for Continuance to
14 Obtain Evidence and Continuance of Discovery (dkts. no. 68 and 70) are denied.

15 The Clerk is instructed to enter judgment in favor Defendants in accordance with
16 this Order and to close this case.

17 DATED THIS 27th day of September 2013.



18
19 MIRANDA M. DU
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28